

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Shawn C. Northrup	) Case No. 3:12-cv-01544-JJH
)
Plaintiff	) Judge Jeffrey J. Helmick
)
vs.	) <u>AMENDED</u>
	) <u>ANSWER OF DEFENDANTS</u>
City of Toledo, et al.)
	) Adam Loukx, Director of Law
Defendants.	) (0062158))
	) John T. Madigan, Senior Attorney
	) (0023614)
	) City of Toledo, Department of Law
	) One Government Center, Suite 2250
	) Toledo, Ohio 43604-2293
	) Telephone: (419) 245-1020
	) Fax: (419) 245-1090
)
	) Counsel for Defendants

Now come Defendants, City of Toledo, Officer D. Bright, Officer Donald Comes and Sergeant Daniel Ray, through Counsel, and for their answer to Plaintiff's Complaint state as follows:

1. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph one (1) of Plaintiff's Complaint, Defendants deny same.
2. Defendants admit the allegations contained in paragraph two (2) of Plaintiff's Complaint.

3. Defendants admit the allegations contained in paragraph three (3) of Plaintiff's Complaint.

4. Defendants admit the allegations contained in paragraph four (4) of Plaintiff's Complaint.

5. Defendants admit the allegations contained in paragraph five (5) of Plaintiff's Complaint.

6. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph six (6) of Plaintiff's Complaint, Defendants deny same.

7. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph seven (7) of Plaintiff's Complaint, Defendants deny same.

8. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph eight (8) of Plaintiff's Complaint, Defendants deny same.

9. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph nine (9) of Plaintiff's Complaint, Defendants deny same.

10. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph eight (sic) (8) of Plaintiff's Complaint, Defendants deny same.

11. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph ten (10) of Plaintiff's Complaint, Defendants deny same.

12. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph eleven (11) of Plaintiff's Complaint, Defendants deny same.

13. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph twelve (12) of Plaintiff's Complaint, Defendants deny same.

14. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph thirteen (13) of Plaintiff's Complaint, Defendants deny same.

15. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph fourteen (14) of Plaintiff's Complaint, Defendants deny same.

16. Defendants admit the allegations contained in paragraph fifteen (15) of the Plaintiff's Complaint.

17. Defendants admit the allegations contained in paragraph sixteen (16) of the Plaintiff's Complaint.

18. Defendants admit the allegations contained in paragraph seventeen (17) of the Plaintiff's Complaint.

19. Defendants deny the allegations contained in paragraph eighteen (18) of the Plaintiff's Complaint.

20. Defendants admit the allegations contained in paragraph nineteen (19) of the Plaintiff's Complaint.

21. Defendants deny the allegations contained in paragraph twenty (20) of the Plaintiff's Complaint.

22. Defendants admit the allegations contained in paragraph twenty-one (21) of the Plaintiff's Complaint.

23. Defendants admit that Plaintiff handed his drivers license to Defendants as alleged in paragraph twenty-two (22) of the Plaintiff's Complaint but only after initially refusing to do so.

24. Defendants admit that the Plaintiff asked why he was being stopped and disarmed as set forth in paragraph twenty-three (23) of the Plaintiff's Complaint but deny the remaining allegations contained therein.

25. Defendants admit the allegations contained in paragraph twenty-four (24) of the Plaintiff's Complaint

26. Defendants admit the allegations contained in paragraph twenty-five (25) of the Plaintiff's Complaint.

27. Defendants deny the allegations contained in paragraph twenty-six (26) of the Plaintiff's Complaint.

28. Defendants deny the allegations contained in paragraph twenty-seven (27) of the Plaintiff's Complaint.

29. Defendants deny the allegations contained in paragraph twenty-eight (28) of the Plaintiff's Complaint.

30. Defendants admit that Plaintiff was asked if he had a concealed carry permit as set forth in paragraph twenty-nine (29) of the Plaintiff's Complaint but deny the remaining allegations contained therein.

31. Defendants admit the allegations contained in paragraph thirty (30) of the Plaintiff's Complaint.

32. Defendants admit that Plaintiff was informed he was being placed under arrest for inducing panic as set forth in paragraph thirty-one (31) of Plaintiff's Complaint but deny the remaining allegations contained therein.

33. Defendants admit the allegations contained in paragraph thirty-two (32) of the Plaintiff's Complaint.

34. Defendants admit the allegations contained in paragraph thirty-three (33) of the Plaintiff's Complaint.

35. Defendants admit the allegations contained in paragraph thirty-four (34) of the Plaintiff's Complaint.

36. Defendants admit the allegations contained in paragraph thirty-five (35) of the Plaintiff's Complaint.

37. Defendants deny the allegations contained in paragraph thirty-six (36) of the Plaintiff's Complaint.

38. Defendants admit that the handcuffs placed on Plaintiff were loosened at Plaintiff's request as set forth in paragraph thirty-seven (37) of the Plaintiff's Complaint but deny the remaining allegations contained therein.

39. Defendants deny the allegations contained in paragraph thirty-eight (38) of the Plaintiff's Complaint.

40. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph thirty-nine (39) of Plaintiff's Complaint, Defendants deny same.

41. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph forty (3) of Plaintiff's Complaint, Defendants deny same.

42. Defendants admit the allegations contained in paragraph forty-one (41) of the Plaintiff's Complaint.

43. Defendants deny the allegations contained in paragraph forty-two (42) of the Plaintiff's Complaint.

44. Defendants admit the allegations contained in paragraph forty-three (43) of the Plaintiff's Complaint.

45. Defendants admit the allegations contained in paragraph forty-four (44) of the Plaintiff's Complaint.

46. Defendants deny the allegations contained in paragraph forty-five (45) of the Plaintiff's Complaint.

47. Defendants deny the allegations contained in paragraph forty-six (46) of the Plaintiff's Complaint.

48. Defendants admit releasing Plaintiff as set forth in paragraph forty-seven (47) of the Plaintiff's Complaint but deny the remaining allegations contained therein.

49. Defendants deny the allegations contained in paragraph forty-eight (48) of the Plaintiff's Complaint.

50. Defendants deny the allegations contained in paragraph forty-nine (49) of the Plaintiff's Complaint.

51. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph fifty (50) of Plaintiff's Complaint, Defendants deny same.

52. Defendants admit making the statement to Plaintiff as set forth in paragraph fifty-one (51) of Plaintiff's Complaint but deny the remaining allegations contained therein.

53. Defendants admit the allegations contained in paragraph fifty-two (52) of the Plaintiff's Complaint.

54. Defendants admit the allegations contained in paragraph fifty-three (53) of the Plaintiff's Complaint.

55. Defendants admit that the criminal complaint filed against Plaintiff was dismissed as alleged in paragraph fifty-four (54) of the Plaintiff's Complaint but deny the remaining allegations contained therein.

56. Defendants admit the allegations contained in paragraph fifty-five (55) of the Plaintiff's Complaint.

57. Defendants admit the allegations contained in paragraph fifty-six (56) of the Plaintiff's Complaint.

58. Defendants deny the allegations contained in paragraph fifty-seven (57) of the Plaintiff's Complaint.

59. The allegations contained in paragraphs one (1) through fifty-eight (58) are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

60. Paragraph fifty-nine (59) of the Plaintiff's Complaint sets forth a statement of law to which no response is necessary.

61. Defendants deny the allegations contained in paragraph sixty (60) of the Plaintiff's Complaint.

62. Defendants deny the allegations contained in paragraph sixty-one (61) of the Plaintiff's Complaint.

63. Defendants deny the allegations contained in paragraph sixty-two (62) of the Plaintiff's Complaint.

64. Defendants deny the allegations contained in paragraph sixty-three (63) of the Plaintiff's Complaint.

65. Defendants deny the allegations contained in paragraph sixty-four (64) of the Plaintiff's Complaint.

66. Defendants deny the allegations contained in paragraph sixty-five (65) of the Plaintiff's Complaint

67. Defendants deny the allegations contained in paragraph sixty-six (66) of the Plaintiff's Complaint

68. Defendants deny the allegations contained in paragraph sixty-seven (67) of the Plaintiff's Complaint

69. Defendants deny the allegations contained in paragraph sixty-eight (68) of the Plaintiff's Complaint

70. Defendants deny the allegations contained in paragraph sixty-nine (69) of the Plaintiff's Complaint

71. Defendants deny the allegations contained in paragraph seventy (70) of the Plaintiff's Complaint.

72. Defendants deny the allegations contained in paragraph seventy-one (71) of the Plaintiff's Complaint

73. Defendants deny the allegations contained in paragraph seventy-two (72) of the Plaintiff's Complaint.

74. Defendants deny the allegations contained in paragraph seventy-three (73) of the Plaintiff's Complaint.

75. Defendants deny the allegations contained in paragraph seventy-four (74) of the Plaintiff's Complaint.

76. Defendants deny the allegations contained in paragraph seventy-five (75) of the Plaintiff's Complaint.

77. Defendants deny the allegations contained in paragraph seventy-six (76) of the Plaintiff's Complaint.

78. Defendants deny the allegations contained in paragraph seventy-seven (77) of the Plaintiff's Complaint.

79. Defendants deny the allegations contained in paragraph seventy-eight (78) of the Plaintiff's Complaint.

80. Defendants deny the allegations contained in paragraph seventy-nine (79) of the Plaintiff's Complaint.

81. The allegations outlined in paragraphs one (1) through eighty (80) are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

82. Paragraph eighty-one (81) of the Plaintiff's Complaint sets forth a statement of law to which no response is necessary.

83. Defendants deny the allegations contained in paragraph eighty-two (82) of the Plaintiff's Complaint.

84. Defendants deny the allegations contained in paragraph eighty-three (83) of the Plaintiff's Complaint.

85. Defendants deny the allegations contained in paragraph eighty-four (84) of the Plaintiff's Complaint.

86. Defendants deny the allegations contained in paragraph eighty-five (85) of the Plaintiff's Complaint.

87. Defendants deny the allegations contained in paragraph eighty-six (86) of the Plaintiff's Complaint.

88. Defendants deny the allegations contained in paragraph eighty-seven (87) of the Plaintiff's Complaint.

89. Defendants deny the allegations contained in paragraph eighty-eight (88) of the Plaintiff's Complaint.

90. Defendants deny the allegations contained in paragraph eighty-nine (89) of the Plaintiff's Complaint.

91. The allegations contained in paragraphs one (1) through ninety (90) are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

92. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph ninety-one (91) of Plaintiff's Complaint, Defendants deny same.

93. Paragraph ninety-two (92) of the Plaintiff's Complaint sets forth a statement of law to which no response is necessary.

94. Paragraph ninety-three (93) of the Plaintiff's Complaint sets forth a statement of opinion on the law to which no response is necessary.

95. Defendants deny the allegations contained in paragraph ninety-four (94) of the Plaintiff's Complaint.

96. Defendants deny the allegations contained in paragraph ninety-five (95) of the Plaintiff's Complaint.

97. Defendants deny the allegations contained in paragraph ninety-six (96) of the Plaintiff's Complaint

98. Defendants deny the allegations contained in paragraph ninety-seven (97) of the Plaintiff's Complaint

99. Defendants deny the allegations contained in paragraph ninety-eight (98) of the Plaintiff's Complaint

100. Defendants deny the allegations contained in paragraph ninety-nine (99) of the Plaintiff's Complaint

101. The allegations outlined in paragraphs one (1) through one hundred (100) are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

102. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph one hundred one (101) of Plaintiff's Complaint, Defendants deny same.

103. For lack of knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph one hundred two (102) of Plaintiff's Complaint, Defendants deny same.

104. Defendants deny the allegations contained in paragraph one hundred three (103) of the Plaintiff's Complaint

105. Defendants deny the allegations contained in paragraph one hundred four (104) of the Plaintiff's Complaint

106. Defendants deny the allegations contained in paragraph one hundred five (105) of the Plaintiff's Complaint

107. Defendants deny the allegations contained in paragraph one hundred six (106) of the Plaintiff's Complaint

108. Defendants deny the allegations contained in paragraph one hundred seven (107) of the Plaintiff's Complaint

109. Defendants deny the allegations contained in paragraph one hundred eight (108) of the Plaintiff's Complaint

110. Defendants deny the allegations contained in paragraph one hundred nine (109) of the Plaintiff's Complaint

111. The allegations contained in paragraphs one (1) through one hundred ten (110) are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

112. Defendants deny the allegations contained in paragraph one hundred eleven (111) of the Plaintiff's Complaint

113. Defendants deny the allegations contained in paragraph one hundred twelve (112) of the Plaintiff's Complaint

114. Defendants deny the allegations contained in paragraph one hundred thirteen (113) of the Plaintiff's Complaint

115. Defendants deny the allegations contained in paragraph one hundred fourteen (114) of the Plaintiff's Complaint

116. The allegations contained in paragraphs one (1) through one hundred fifteen (115) are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

117. Defendants deny the allegations contained in paragraph one hundred sixteen (116) of the Plaintiff's Complaint

118. Defendants deny the allegations contained in paragraph one hundred seventeen (117) of the Plaintiff's Complaint

119. Defendants deny the allegations contained in paragraph one hundred eighteen (118) of the Plaintiff's Complaint

120. Defendants deny the allegations contained in paragraph one hundred nineteen (119) of the Plaintiff's Complaint

121. Defendants deny the allegations contained in paragraph one hundred twenty (120) of the Plaintiff's Complaint

122. Defendants deny the allegations contained in paragraph one hundred twenty-one (121) of the Plaintiff's Complaint

123. Defendants deny the allegations contained in paragraph one hundred twenty-two (122) of the Plaintiff's Complaint

124. The allegations contained in paragraphs one (1) through one hundred twenty-three (123) of Plaintiff's Complaint are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

125. Defendants admit that they were, at all times employees of the City of Toledo, acting within the scope of their employment, as alleged in paragraph one hundred twenty-four (124) of the Plaintiff's Complaint but deny the remaining allegations contained therein.

126. Defendants deny all of the allegations contained in paragraph one hundred twenty-five (125) of Plaintiff's Complaint.

127. The allegations contained in paragraphs one (1) through one hundred twenty-six (126) of Plaintiff's Complaint are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

128. Defendants admit that they were, at all times employees of the City of Toledo, as alleged in paragraph one hundred twenty-seven (127) of the Plaintiff's Complaint but deny the remaining allegations contained therein.

129. Defendants deny all of the allegations contained in paragraph one hundred twenty-eight (128) of Plaintiff's Complaint.

130. Defendants deny all of the allegations contained in paragraph one hundred twenty-nine (129) of Plaintiff's Complaint.

131. The allegations contained in paragraphs one (1) through one hundred thirty (130) of Plaintiff's Complaint are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

132. Defendants deny all of the allegations contained in paragraph one hundred thirty-one (131) of Plaintiff's Complaint.

133. Defendants deny all of the allegations contained in paragraph one hundred thirty-two (132) of Plaintiff's Complaint.

134. The allegations contained in paragraphs one (1) through one hundred thirty-three (133) of Plaintiff's Complaint are denied or admitted to the same extent that said allegations were hereinbefore denied or admitted.

135. Defendants deny all of the allegations contained in paragraph one hundred thirty-four (134) of Plaintiff's Complaint.

136. Defendants deny all of the allegations contained in paragraph one hundred thirty-five (135) of Plaintiff's Complaint.

137. Defendants deny all of the allegations contained in paragraph one hundred thirty-six (136) of Plaintiff's Complaint

138. Defendants deny all of the allegations contained in paragraph one hundred thirty-seven (137) of Plaintiff's Complaint

139. Defendants deny all of the allegations contained in paragraph one hundred thirty-eight (138) of Plaintiff's Complaint

140. Defendants deny all of the allegations contained in paragraph one hundred thirty-nine (139) of Plaintiff's Complaint

SECOND DEFENSE

141. Plaintiff's Complaint fails to state any claim upon which relief can be granted.

THIRD DEFENSE

142. The claims outlined in Plaintiff's Complaint are barred by the appropriate statute of limitations.

FOURTH DEFENSE

143. Plaintiff has sustained no constitutional deprivation or violation.

FIFTH DEFENSE

144. The acts, omissions or other conduct of which Plaintiff complains were performed in self-defense and/or pursuant to legal privilege and with probable cause.

SIXTH DEFENSE

145. The acts, omissions or other conduct of which Plaintiff complains were not performed/omitted pursuant to any policy or custom promulgated, authorized, continued, ratified and acquiesced in by the City of Toledo.

SEVENTH DEFENSE

146. To the extent the acts, omissions or other conduct of which Plaintiff's complaint were performed/omitted pursuant to one or more policies or customs of the City of Toledo, such policies and/or customs are constitutional, and were not the proximate cause of Plaintiff's alleged injuries and other losses.

EIGHTH DEFENSE

147. To the extent such policies or customs may be unconstitutional, such unconstitutionality is not the result of any deliberate indifference on the part of the City of Toledo.

NINTH DEFENSE

148. The City of Toledo is absolutely immune from any liability to Plaintiff in punitive damages pursuant to federal law.

TENTH DEFENSE

149. Officer D. Bright, Officer Donald Comes and Sergeant. Daniel Ray are qualifiedly immune from any liability to Plaintiff.

ELEVENTH DEFENSE

150. Plaintiff has suffered no legally actionable injury, loss or damage.

TWELFTH DEFENSE

151. At the time of the filing of Plaintiff's Complaint, there was no well-grounded factual or legal basis to support an entitlement to the relief requested therein, nor has there ever been any such basis to support same. Plaintiff's claims are, therefore, frivolous, unreasonable, groundless and without merit, and the Defendants are entitled to an award of reasonable attorneys fees and all costs and expenses incurred in the defense of this action.

THIRTEENTH DEFENSE

152. The City of Toledo, Police Division is not a body politic and is not capable of suing or being sued under the doctrine of *sui juris*.

FOURTEENTH DEFENSE

153. Defendant City of Toledo cannot be liable under the doctrine of *respondeat superior*

FIFTEENTH DEFENSE

154. Defendants City of Toledo, Officer D. Bright, Officer Donald Comes, and Sergeant Daniel Ray are immune from any liability to Plaintiff by virtue of Ohio Revised Code Chapter 2744.

WHEREFORE, Defendants, Officer D. Bright, Donald Comes, Sergeant Daniel Ray and the City of Toledo, through Counsel, respectfully pray that Plaintiff's Complaint be dismissed in its entirety with prejudice; that Plaintiff's demands for relief be denied in their entirety; that judgment be entered for said Defendants together with costs herein expended, reasonable attorneys fees and such other and further relief as is just and equitable.

JURY DEMAND

Defendants respectfully request a trial by jury on all issues so triable in the within cause.

Respectfully submitted,

ADAM W. LOUKX, DIRECTOR OF LAW

/s/ John T. Madigan
John T. Madigan, Senior Attorney
Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer was sent by regular U.S. mail to Daniel T. Ellis, Esq., attorney for Plaintiff at: LYDY & MOAN, LTD. 4930 N. Holland-Sylvania Rd, Sylvania, Ohio 4356 this 5th day of September, 2013.

/s/ John T. Madigan
John T. Madigan, Senior Attorney